

Message

From: Jones, Connie [Jones.Constance@epa.gov]
Sent: 5/11/2021 2:02:42 PM
To: Brock, Martha [Brock.Martha@epa.gov]; Amoroso, Cathy [Amoroso.Cathy@epa.gov]; Froede, Carl [Froede.Carl@epa.gov]
CC: Johnson, MaryC [Johnson.MaryC@epa.gov]; Buxbaum, David [Buxbaum.David@epa.gov]
Subject: RE: I received the EMDF ROD ARARs invitation

Martha, I agree and DOE was reminded at that same FFA PM meeting about finalizing the FFS.

From: Brock, Martha <Brock.Martha@epa.gov>
Sent: Tuesday, May 11, 2021 9:30 AM
To: Jones, Connie <Jones.Constance@epa.gov>; Amoroso, Cathy <Amoroso.Cathy@epa.gov>; Froede, Carl <Froede.Carl@epa.gov>
Cc: Johnson, MaryC <Johnson.MaryC@epa.gov>; Buxbaum, David <Buxbaum.David@epa.gov>
Subject: RE: I received the EMDF ROD ARARs invitation

As we have discussed, DOE was directed to submit the revised FFS "in accordance with" FFA Section XXVI.J, which is within 35 days after resolution of the dispute. Giving the most "lenient" timeframe read, that 35-day clock could have begun on January 19, 2021 (if not the date of the Decision December 31, 2020); that 35-day period ended on February 23, 2021.

By one read of the Decision, it seems to me that the FFS would have included PRGs for effluent limits for pollutants, and AWQCs for radionuclides, since the Decision did not specifically grant such leniency for those. But we were not party to the addition of the highlighted language. That happened at OECA (and maybe other offices), but did not include ORC staff counsel. So if anyone at HQ has some insight. Or maybe DOE; it is unlikely but not impossible, of course, that Susan would have come up with "review in parallel" language by herself.

What the Decision gave leniency on, in terms of the FFS, was the development of PRGs for effluent limitations for radionuclides, by saying that DOE could develop the PRGs for effluent limitations radionuclides "in parallel with Region 4's review of the draft ROD . . ." So those will be final in the ROD prior to EPA approval, I assume. Any notion about a post-ROD document is not suggested by the Decision.

In accordance with Section XXVI.J of the FFA, the DOE is directed to incorporate this resolution and final determination into and to revise the FFS as necessary to conform with this decision. It is my expectation that fish tissue studies and development of PRGs for effluent limitations for radionuclides will occur in parallel with Region 4's review of the draft ROD to continue progress on the remedial actions for establishing additional landfill capacity at ORR.

If you read the Decision to say something different about these two documents, maybe we can talk through it prior to next week's meeting with DOE.

From: Jones, Connie <Jones.Constance@epa.gov>
Sent: Tuesday, May 11, 2021 9:04 AM
To: Amoroso, Cathy <Amoroso.Cathy@epa.gov>; Brock, Martha <Brock.Martha@epa.gov>; Froede, Carl <Froede.Carl@epa.gov>
Subject: RE: I received the EMDF ROD ARARs invitation

From the "combined Append E/J report, DOE does not have a revised FFS identified. This issue was discussed at the FFA PM meeting where DOE rolled out their proposal for submitting the D1 ROD. It was stated that FFS needs to be milestone.

There is a FFA PM meeting this week so I will raise this matter again.

From: Amoroso, Cathy <Amoroso.Cathy@epa.gov>

Sent: Monday, May 10, 2021 12:56 PM

To: Brock, Martha <Brock.Martha@epa.gov>; Jones, Connie <Jones.Constance@epa.gov>; Froede, Carl <Froede.Carl@epa.gov>

Subject: RE: I received the EMDF ROD ARARs invitation

FFS: I don't know that date for the revised waste water FFS submittal. The project team is dusting off the FFS and figuring out what/how to update/revise. I'm cc:ing Connie and Carl in case they have a date.

Proposed Plan: DOD believes they met their public participation obligations, and that the more recent new information doesn't meet the criteria for a pre-ROD change. DOE does not plan to re-issue the PP. EPA's concern is whether the initial PP and public comment period adequately meets the NCP public participation requirements, given the various missing information at the time of the PP. This issue will be elevated to the senior leadership team (DOE site manager, TDEC commissioner/deputy commissioner, R4 RA/DRA).

- DOE is developing a short, written proposal to outline the additional proposed public information activities regarding WAC, site selection (including waivers, gw info, etc.), mercury management, and effluent discharge limits for rad.
- The proposal is essentially to provide additional/updated information to the public, and hold Q&A sessions, with the exception of the WAC. The WAC would be made available for review, and comments accepted.

Whether or not our senior leaders will find this adequate, and whether HQ will find this adequate, I do not know. We probably will have to have an internal meeting on this so we can brief our senior leaders. I will share the DOE written proposal when I get it.

From: Brock, Martha <Brock.Martha@epa.gov>

Sent: Monday, May 10, 2021 10:11 AM

To: Amoroso, Cathy <Amoroso.Cathy@epa.gov>

Subject: RE: I received the EMDF ROD ARARs invitation

When is DOE submitting the revised FFS?

And what is the discussion about the Proposed Plan being resubmitted OR having public comment on something more than the WAC?

From: Amoroso, Cathy <Amoroso.Cathy@epa.gov>

Sent: Monday, May 10, 2021 9:22 AM

To: Brock, Martha <Brock.Martha@epa.gov>

Subject: RE: I received the EMDF ROD ARARs invitation

I just sent Steve Stout an email asking if a TDEC attn is involved. I hope so. And if not, as you say, we will stop the buggy.

From: Brock, Martha <Brock.Martha@epa.gov>

Sent: Monday, May 10, 2021 9:21 AM

To: Amoroso, Cathy <Amoroso.Cathy@epa.gov>; Jones, Connie <Jones.Constance@epa.gov>; Froede, Carl <Froede.Carl@epa.gov>

Cc: Adams, Glenn <Adams.Glenn@epa.gov>

Subject: RE: I received the EMDF ROD ARARs invitation

That is good that it is not bilateral.

From: Amoroso, Cathy <Amoroso.Cathy@epa.gov>

Sent: Monday, May 10, 2021 9:19 AM

To: Brock, Martha <Brock.Martha@epa.gov>; Jones, Connie <Jones.Constance@epa.gov>; Froede, Carl <Froede.Carl@epa.gov>

Cc: Adams, Glenn <Adams.Glenn@epa.gov>

Subject: RE: I received the EMDF ROD ARARs invitation

Hi Martha, Connie and Carl,

Regarding the EMDF ROD, the ARARs meeting is one of a series of meetings (DOE calls "workshops") that DOE proposed, and our Senior Leaders (Carol and John Blevins) agreed to. The purpose is to work out, as much as we can, some ROD items (ARARs, WAC) prior to the D1 ROD (which is due to be submitted in July). DOE will also be asking us to participate in a workshop for the WAC.

ARARS: My understanding is that the three parties (EPA, TDEC and DOE) will discuss the draft ARAR documents. The purpose is to get a slight head start on the D1 ROD. There is no expectation that all the ARARs will be worked out before the D1 ROD review period, and obviously you all will need the D1 ROD in order to make formal comments on the ARARs. In the meantime, the documents sent today by DOE are a preview, and if there are showstoppers or things that are easy to agree on, those items can be identified and discussed.

I'm not sure why the TDEC attorney isn't on this mailing list. I'm assuming that Brad Stephenson (TDEC) will forward to the TDEC attorneys, but I will check. This should be a three party meeting, not bilateral meeting, as far as I know.

Other items:

FFS: The task of revising the FFS will go back to the EMWFMF project team (Carl).

WAC: DOE will also be asking us to participate in a workshop regarding the WAC.

EMDF Hg Management: TDEC has been working directly with DOE on this. We will be setting up an EPA/TDEC meeting to discuss; look out for a meeting invitation.

We can meet before Wednesday, if everyone wants to. I'll look for a time slot.

Cathy

From: Brock, Martha <Brock.Martha@epa.gov>

Sent: Monday, May 10, 2021 8:43 AM

To: Amoroso, Cathy <Amoroso.Cathy@epa.gov>; Jones, Connie <Jones.Constance@epa.gov>; Froede, Carl <Froede.Carl@epa.gov>

Subject: I received the EMDF ROD ARARs invitation

For next Tuesday.

Are we speaking with TN before that call?

What is the purpose of the call?

Will the person who created the documents be on the call?

Is DOE having TDEC and an EPA bilateral calls?

Martha Brock

Senior Attorney, Federal Facilities; EPA Region 4
61 Forsyth St., SW; Atlanta, GA 30303

Ph: (404) 562-9546
Work Cell: (470) 512-7133

If the agency's interpretation deviates from prior policy, the agency must provide a reasoned basis for the change. *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125–26 (2016).